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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,731	11/11/2003	Michael Collier	005127.00307	5000
22910 7590 01/17/2008 BANNER & WITCOFF, LTD. 28 STATE STREET 28th FLOOR BOSTON, MA 02109-9601			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 01/17/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/705,731

Applicant(s)

COLLIER ET AL.

Examiner

Justin M. Larson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11-15 and 17-28 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 19-21, 24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 9, 11-15, 17, 18, 22, 23, 25, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/28/07 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 25 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner still does not feel that the originally filed disclosure provides adequate and clear support for what exactly is meant by "free of material used to form the transverse chambers". Examiner notes that Applicant has changed the word "gap" to "aperture" in claim 25. The word "aperture" alone, without the questionable language, clearly distinguishes applicant's apertures from a gap like those

shown by Sebastian. Examiner suggests leaving the word "aperture" in the claim and removing the questionable language.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchner (US 3,134,995 A) in view of Lauro (US 1,538,627 A), and further in view of Sebastian (US 5,728,055 A).

Regarding claim 1, Kirchner discloses a bladder comprising, in combination: a first longitudinal chamber (top); a second longitudinal chamber (bottom) spaced apart from the first; a plurality of transverse chambers (between 22,23,24), each being connected between and in fluid communication with the first and second longitudinal chambers and having longitudinal axis parallel to one another; and a plurality of elongate transverse apertures (22,23,24) disposed between adjacent transverse chambers.

Kirchner fails to disclose the second longitudinal chamber being substantially parallel to the first and also fails to disclose the longitudinal axis of each transverse chamber being disposed at an acute angle with respect to a longitudinal axis of the bladder.

Regarding the longitudinal chambers being parallel to one another, the shape of the Kirchner bladder simply does not allow for such a feature, as the top edge of the bladder is flat and the bottom edge of the bladder is bent. Lauro, however, discloses a similar bladder and teaches that both the top and bottom edges of that bladder can be flat or parallel to one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bladder of Kirchner to have parallel top and bottom edges, as taught by Lauro, since such a bladder shape is known in the art. There is no inventive step in choosing between known bladder shapes absent a showing of unexpected results. When the bladder of Kirchner is made with such a shape, the first and second longitudinal chambers would be substantially parallel to one another.

Regarding the transverse chambers being oriented at an acute angle with respect to a longitudinal axis of the bladder, Sebastian teaches that the transverse chambers (14) of a bladder may be orientated at an acute angle with respect to a longitudinal axis of the bladder so as to create a contraction function about a user in order to prevent the bladder from rising upward on the user (col. 3 lines 47-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the Kirchner bladder by forming the transverse chambers at an acute angle with respect to a longitudinal axis of the bladder, as taught by Sebastian, in order to prevent the bladder from riding up a user's body during use. There is no inventive step in taking a feature from a first bladder and implementing it on a second

bladder where that feature would provide desirable characteristics is the second bladder, absent a showing of unexpected results.

Regarding claim 2, the modified Kirchner bladder includes a flange (14), as originally taught by Kirchner.

Regarding claim 6, the transverse apertures of the modified Kirchner bladder are disposed at an acute angle with respect to a longitudinal axis of the bladder. This must be the case in order to achieve the contraction function as taught by Sebastian.

6. Claims 3, 4, 9, 11-15, 17, 18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchner in view of Lauro and Sebastian, as applied above, further in view of Preiss (US 6,644,522 B2).

Regarding claims 3 and 14, the modified Kirchner bladder as set forth above includes the claimed features except for two flange apertures adjacent endmost transverse chambers.

Preiss, however, also discloses a bladder surrounded by a flange (501) and teaches that the flange includes apertures (around 515 and 515', the space between the ball portions and portions 517 and 517') through which a strap may be received. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form strap-attachment apertures (essentially adding the strap attachment 506 as shown by Preiss) in the flange of the modified Kirchner bladder, as taught by Preiss, effectively replacing the strap-attachment means originally taught by Kirchner, in order to provide an adjustable bladder-to-strap connection. There is no inventive step in

choosing between known strap-attachment means, absent a showing of unexpected results.

Regarding claims 4 and 15, the flange apertures of the modified Kirchner bladder have angled opening (as taught by Preiss) through which a longitudinal axis can be considered to extend, the angle being acute with respect to a longitudinal axis of the bladder.

Regarding claims 9, 18, and 22, the modified Kirchner bladder includes all of the claimed features, namely a pad or layer of compressible material (13, as originally taught by Kirchner), a bladder as claimed, and a length of webbing slidably connected to first and second ends of the pad (as allowed by the flange apertures taught by Preiss).

Regarding claims 11-13, the modified Kirchner bladder includes a flange (14) that is secured via stitching (25) to the pad (13), as originally taught by Kirchner.

Regarding claim 17, the transverse apertures of the modified Kirchner bladder are disposed at an acute angle with respect to a longitudinal axis of the bladder. This must be the case in order to achieve the contraction function as taught by Sebastian.

7. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchner in view of Lauro and Sebastian and Preiss, as applied above, further in view of Felz (US 1,651,921 A).

The modified Kirchner bladder as set forth above includes the claimed features except for a bag connected to the webbing or belt (15) of Kirchner.

Felz, however, teaches that a small bag (2) may be attached to a belt in order to allow a user to discretely store items therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a bag to belt of the modified Kirchner bladder, as taught by Felz, in order to allow a user of the bladder to discretely store items on their person. There is no inventive step in implementing a bag that is known to be mounted on a belt onto any other existing belt, absent a showing of unexpected results. Examiner notes that one accepted definition of the word "bag" reads, "a container or receptacle of leather, plastic, cloth, paper, etc., capable of being closed at the mouth; pouch" ([www.dictionary.com](http://www.dictionary.com)). This definition clearly applies to the bag/pouch of Felz.

8. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchner in view of Sebastian.

Kirchner discloses the bladder as claimed except for each transverse chamber being disposed at an acute angle with respect to a longitudinal axis of the bladder.

Sebastian, however, teaches that the transverse chambers (14) of a bladder may be orientated at an acute angle with respect to a longitudinal axis of the bladder so as to create a contraction function about a user in order to prevent the bladder from rising upward on the user (col. 3 lines 47-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Kirchner bladder by forming the transverse chambers at an acute angle with respect to a longitudinal axis of the bladder, as taught by Sebastian, in order to prevent the bladder from riding up a user's body during use. There is no inventive step in taking a feature



from a first bladder and implementing it on a second bladder where that feature would provide desirable characteristics is the second bladder, absent a showing of unexpected results.

Regarding claim 27, the modified Kirchner bladder includes a strap (15), as originally taught by Kirchner, which can be user-manipulated to twist the bladder, effectively serving as a means for twisting to the degree claimed.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchner in view of Lauro.

Kirchner discloses the bladder as claimed except for the second longitudinal chamber being substantially parallel to the first.

The shape of the Kirchner bladder simply does not allow for such a feature, as the top edge of the bladder is flat and the bottom edge of the bladder is bent. Lauro, however, discloses a similar bladder and teaches that both the top and bottom edges of that bladder can be flat or parallel to one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bladder of Kirchner to have parallel top and bottom edges, as taught by Lauro, since such a bladder shape is known in the art. There is no inventive step in choosing between known bladder shapes absent a showing of unexpected results. When the bladder of Kirchner is made with such a shape, the first and second longitudinal chambers would be substantially parallel to one another.

***Response to Arguments***

10. Applicant's arguments filed 11/28/07 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
1/8/08

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER